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## ANALYSIS

### I. Counts I and II – Constitutional and Civil Rights Claims

Plaintiff argues that the Court erred in dismissing her constitutional and civil rights claims (Counts I and II) without adequately addressing her argument that the search warrant was based on a false affidavit submitted by Officer Linville.<sup>1</sup> (Pl.’s Mot. at 1.)

The Court did not need to address such an argument because plaintiff did not allege that Officer Linville intentionally or recklessly made false statements that were material to the probable cause finding. *See Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1555, 1564 (2007) (explaining pleading must “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests”) (citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). The complaint refers to “a flawed affidavit” (Compl. ¶ 18), “a deficient affidavit” (*id.* ¶¶ 86, 91), and “an

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<sup>1</sup> To prevail on this theory, plaintiff must show that (1) the affidavit contained false statements; (2) the statements were material to the issue of probable cause; and (3) the false statements were made knowingly or with reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); *see also United States v. Richardson*, 861 F.2d 291, 293 (D.C. Cir. 1988).

affidavit . . . deficient and lacking in facts (*id.* ¶ 80), but it fails to allege that the affidavit contained material information that was false. The complaint alleges that “Officer Linville negligently requested a warrant based on unreliable information and factual inconsistencies.” (*Id.* ¶ 102.) However, “[a]llegations of negligence or innocent mistake are insufficient” to satisfy the *Franks* test which requires intentional or reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154, 171 (1978); *see also United States v. Dale*, 991 F.2d 819 (D.C. Cir. 1993) (holding that failure to investigate fully is not evidence of affiant’s reckless disregard for the truth because questioning of others might have caused a leak in the drug investigation). Although the complaint alleges that “Ms. Andreen believed the officers were lying to *her*”<sup>2</sup> (Compl. ¶ 52 (emphasis added)), it does not allege that any officer lied, or acted with reckless disregard to the truth, when providing information to the judge who issued the search warrant. Finally, plaintiff’s attack on the veracity of the Special Employee, a non-governmental informant, is not grounds for relief. *See Franks*, 438 U.S. at 171.

Given these allegations, the Court properly concluded that the warrant was supported by probable cause and any alleged inadequacies in the investigation or deficiencies in the affidavit did not rise to the level of a constitutional violation. (*See Mem. Opin.* at 4-6.)

## **II. Count IV – Conspiracy Claim**

In support of her motion to reconsider, plaintiff also argues that the Court failed to address Count IV of her complaint – an alleged conspiracy to cover up the illegal search of her apartment, destruction of property and failure to secure the premises. (Pl.’s Mot at 4.)

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<sup>2</sup> More specifically, plaintiff alleges that she received inconsistent explanations from the officers as to whether the information in the affidavit came from a Special Employee or a Confidential Informant, and as to where and from whom the narcotics were purchased in the building. (Compl. ¶¶ 47-67.)

